



OFFICE OF THE HUDSON COUNTY PROSECUTOR

595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

ESTHER SUAREZ
PROSECUTOR

TELEPHONE: (201) 795-6400
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July 29, 2021

VIA ELECTRONIC MAIL ONLY

Opra+request-24757-154d55bc@requests.opramachine.com

John Smith

Re: July 21, 2021 OPRA and Common Law Request for Affidavit of Probable Cause
Along with Police Reports related to William Milner of Mechanic Street
Bayonne, NJ

Dear Mr. Smith:

The Hudson County Prosecutor's Office (HCPO) is in receipt of your above request under the New Jersey Open Public Records Act, N.J.S.A. 47: 1A-1, et. seq. and Common Law. (Copy is attached for your easy reference.)

In response to your request, please find herein the Affidavit of Probable Cause attached to the Complaint-Warrant No. 000402. Your request for "police reports" is hereby denied as exempt from disclosure as criminal investigatory records under OPRA.

Criminal investigatory records are defined as "record[s] which [are] not required by law to be made, maintained or kept on file that are held by a law enforcement agency which pertain to any criminal investigation or related civil enforcement proceeding." These are not government records and are therefore exempt from disclosure pursuant to OPRA. N.J.S.A. 47:1A-1.1; Newman v. New Jersey State Police, GRC Complaint No. 2013-347 (July 2014) (incident reports describing New Jersey State Police response to a call are criminal investigatory records); Maniscalco v. Atlantic County Prosecutor's Office, GRC Complaint No. 2012-247 (July 2013) (records based upon complaint filed with ACPO were criminal investigatory records); Nance v. Scotch Plains Twp. Police Dep't, GRC Complaint No. 2003-125 (January 2005) (police incident reports, continuation reports, and property and evidence reports are criminal investigatory records); Executive Order No. 69 (Whitman) (arrest booking photos are not subject to OPRA). Even after the conclusion of a case, such documents retain their character as criminal investigatory

records. Janeczko v. NJ Department of Law and Public Safety, GRC Complaint Nos. 2001-79 and 2002-80 (June 2004); Johnson (on behalf of Press of Atlantic City) v. NJ Division of State Police, GRC Complaint No. 2004-46 (June 2004). Indeed, even in cases where no criminal charges are filed, the reports remain classified as criminal investigatory records. Id.

You requested the same records under the common law. Unlike with OPRA, the burden to show that access to public records should be permitted lies with the requestor. "The common-law right to access public records depends on three requirements: (1) the records must be common-law public documents; (2) the person seeking access must 'establish an interest in the subject matter of the material,'; and (3) the citizen's right to access 'must be balanced against the State's interest in preventing disclosure.'" Keddie v. Rutgers, 148 N.J. 36, 50, 689 A.2d 702, 709 (1997) (internal citations omitted). Setting aside for the moment whether or not the records you seek are common-law public documents, you have neither established an interest in the subject matter of such records, nor have you established that your need for disclosure outweighs the HCPO's public policy interest in preventing such disclosure. Accordingly, your request is denied under common law.

The Hudson County Prosecutor's Office reserves the right to raise any other grounds in support of this response. The failure of the Hudson County Prosecutor's Office to assert an exception, exemption or privilege does not act as a waiver of any ground for denial.

As with any OPRA request, you have the right to challenge the HCPO's determination. At your option, you may either file a complaint in writing with the Government Records Council (GRC), located in the Department of Community Affairs, or institute a proceeding in the Superior Court.

Very truly yours,

ESTHER SUAREZ
Prosecutor of Hudson County

By:



JOHN P. LIBRETTI
Chief of Civil Litigation Unit

JL/
Enclosures
c. Office of the Hudson County Counsel

OPRA request - State of NJ vs William Milner

John Smith <opra+request-24757-154d55bc@requests.opramachine.com>

Wed 7/21/2021 11:08 PM

To: OPRA <opra@hcopo.org>;

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Dear Hudson County Prosecutor's Office,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

Affidavit of Probable Cause along with Police Reports related to William Milner of Mechanic Street, Bayonne NJ.

Yours faithfully,

John Smith

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-24757-154d55bc@requests.opramachine.com

Is opra@hcopo.org the wrong address for OPRA requests to Hudson County Prosecutor's Office? If so, please contact us using this form:

https://opramachine.com/change_request/new?body=hcopo

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies:
<https://opramachine.com/help/officers>

View this OPRA request & responses online:

https://opramachine.com/request/state_of_nj_vs_william_milner

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.

Affidavit of Probable Cause

COMPLAINT NUMBER

0901**S****2021****000402**

COURT CODE

PREFIX

YEAR

SEQUENCE NO.

BAYONNE CITY MUNICIPAL COURT**630 AVENUE "C"****BAYONNE****NJ 07002-0000****201-858-6918**COUNTY OF: **HUDSON**

of CHARGES

10

CO-DEFTS

POLICE CASE #:

2021050365COMPLAINANT
NAME:**DET. SEAN KENNEDY****595 NEWARK AVE 6TH FLOOR****JERSEY CITY****NJ 07306****THE STATE OF NEW JERSEY****VS.****WILLIAM S MILNER**

ADDRESS:

DEFENDANT INFORMATION

SEX: **M** EYE COLOR: **BLUE**

DOB: [REDACTED]

DRIVER'S LIC. #:

DL STATE:

SOCIAL SECURITY #: [REDACTED]

SBI #: [REDACTED]

TELEPHONE #: [REDACTED]

LIVESCAN PCN #: **099901001105**

Purpose: This Affidavit/Certification is to more fully describe the facts of the alleged offense so that a judge or authorized judicial officer may determine probable cause.

1. Description of relevant facts and circumstances which support probable cause that (1) the offense(s) was committed and (2) the defendant is the one who committed it:

On June 7, 2021, members of the Hudson County Prosecutor's Office, United States Department of Homeland Security Investigations, and the United States Postal Inspectors Service conducted a controlled delivery of two (2) parcels to the address of [REDACTED] NJ, which had been previously seized and search by United States Customs and Border Protection pursuant to a international border search. The two parcels were found to contain a total of approximately 123 grams of MDMA/Ecstasy. Officers conducted an undercover controlled delivery during which both parcels were accepted by William Milner at the address. Upon delivery, a court authorized anticipatory search warrant was then executed at the address at which time William Milner was detained and arrested. Upon conducting the search of Milner's apartment, approximately suspected 12 marijuana plants, an undetermined amount of suspected LSD, approximately 5 grams of suspected 2C-B, a small quantity of D.M.T. and an undetermined quantity of LSD were recovered and seized. The two parcels containing the 123 grams of suspected MDMA were also recovered. Milner's residence is located within 1,000 feet of Beacon Christian Academy located at 30 Prospect Avenue in Bayonne, New Jersey.

Affidavit of Probable Cause**Page 17 of 19****1/1/2017**